



LORD DURHAM

AND

THE CANADIANS.

A REPRINT

From the January number of the

LONDON and WESTMINSTER

REVIEW.



Montreal :

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From the January number of the London and Westminster Review.

WE had intended, on the present occasion, to review and characterize the various divisions of the multitudinous and widely scattered Radical party : to show to each of the diversified bodies of men who compose it, what the others are, and are doing—by learning which it can alone know what itself is ; to enable them to look at themselves, and at each other, in the light most calculated to allay unreasonable distrust and awaken sympathies ; to point out to them the common ground on which they may meet and co-operate, the common objects in the attainment whereof each would find the realization of his separate aims ; the points, therefore, to which the efforts of all should converge, and the organization and marshalling, by which those efforts may be brought most vigorously to bear upon those points. By doing this, we should be, at the same time, placing before the well intentioned part of those who have not hitherto been in sympathy with us, a view of what Radicalism is. We should show them that the demons and spectres which frighten them from their propriety are not Radicalism, have no natural connection with Radicalism : That the essentials of it are not only reconcileable, but naturally allied, with all that ever was venerable or deserving of attachment in the doctrines and practices handed down to us from those ancestors, and those great teachers, whom they delight to honour : That it is the pretended apostles of those traditional opinions and institutions who dishonour them ; That the low objects to which they prostitute them, and the low grounds on which they defend them, are loosening the hold which those old ideas had on the intellects and on the affections of mankind, and sinking what is good and noble in them, along with what is effete or despicable, into a common contempt : That it is the Radical view of them alone which can save them : That to be ever again objects of veneration in this New World, these Old Things must be seen with the eyes of Radicals ; that they must reconcile themselves with Radicalism,

must fill themselves to overflowing with its spirit: That Conservatives must adopt the Radical creed into their own creed—must discard all with which that creed is essentially incompatible, if they would save that in their own which is true and precious, from being lost to the world, overwhelmed in an unequal contest. For Radicalism is a thing which must prevail. It is a thing which the better and the worse influences of advancing civilization equally conspire to promote; and this age has no other power over it but that of deciding what *sort* of Radicalism shall, in the first instance, predominate. That mainly depends upon the attitude which those classes, on whom society has lavished its means of instruction and cultivation, may, ere it be too late, be wise enough to assume towards the remainder.

These were the topics to which we had destined the present article; but these things must now wait for our next publication. A question has arisen which, for the present, places these great principles in abeyance; which suspends all united action among Radicals; which sets one portion of the friends of popular institutions at variance with another, and, by rivetting all attention upon events of immediate urgency and of melancholy interest, interrupts for the time all movements and all discussions tending to the great objects of domestic policy. We need scarcely say that we allude to Canada. On this most grievous subject we shall, in the course of this article, declare our whole opinion. But as Canada will not occupy the whole session, and as the interval afforded by Lord Durham's mission will allow the public mind to revert to what was so strongly occupying it before, we are anxious in the first place to say something on the duties devolving upon the Radical party, in the position in which it is placed by Lord John Russell's declaration of hostilities on the first night of the session.

It would be wasting time to expend any in discussing now, what Reformers ought to think of this ministerial declaration, or what feelings they ought to bestow in return for it. On that subject the mind of the country is made up. The Ministers are now understood. The alliance between them and the Radicals is broken, never more to be re-united. The late splendid demonstrations of Reform feeling, in all parts of the island, and the declarations of want of confidence in the Ministry, which have been carried by immense majorities at the greater part even of the meetings which were called by their friends—these facts, however attempted to be stifled by that systematic suppression of intelligence which the Whig and Tory newspapers have practised on this occasion to an ex-

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tent unexampled in our remembrance, and which constitute a distinct pecuniary fraud upon their subscribers—are nevertheless known and appreciated. They are a proof that the Ministry have been taken at their word : that their camp and that of the Radicals are now separated : that the Radicals are organizing themselves as a separate party ; that the spirit of reform is no longer obedient to Lord John Russell's curb ; and that, in determining what proceedings are fittest for promoting the rapid success of the cause of popular institutions, counsel will no longer be taken with its avowed enemies.

We can understand the terror of the mere place-holding portion of the Whigs, at demonstrations which so manifestly endanger their continuance in place ; and the consternation of those Radical writers, and local or sectional leaders of Radicals, who having for the first time in their lives known what it is to be courted by a Ministry, would gladly go on uniting the credit of being for the people, with the vanity and the more substantial advantages of being on the side of power. What we cannot so well understand is, why some sincere Radicals should behave as if they thought that the disclosure which has been made to us of the real purposes of the Ministry, and the knowledge which we have thence derived of what we have to expect from them, and of what we need not expect, is an evil : and so great an evil as to justify resentment ; so great, that the man who has brought it upon us by his "untimely" questions to Lord John Russell, should be treated as if he had inflicted on us a deadly injury. Mr. Wakley has had the usual fate of the messenger of ill news. He has roused the lethargic, and compelled the sleepy to open their eyes, and anger at being disturbed is their first feeling and his reward. If Mr. Wakley's silence could have made any difference in Lord John Russell's sentiments, no one would have regretted more than we, that the silence was ever broken ; but since Mr. Wakley could only compel him to say what he already intended to do, is there any Reformer who wishes that it had remained unsaid ? If the Ministerial mind had been undecided—had been gradually and insensibly coming round to us, it might have been wrong to break in upon that process, and force Ministers to a premature declaration when they were but half prepared to express the opinion which was desired ; but since their minds were made up, and to an opinion the reverse of what was wished for, could this be too soon known ? Is there not a lurking regret that we cannot longer enjoy the pleasure of being cheated, a pleasure rated so highly by the greatest judges of human nature, and which may be defined, the pleasure of not being called upon for any activity, for any foresight, for any exercise of

our own judgment as to our duties, for any exertion to help ourselves or others? To have got rid of a delusion which made us torpid and cowardly, and to have acquired a self reliance which makes us vigorous and awake, is a gain, in our circumstances, inappreciable; and to whomsoever we owe it, that man has conferred a benefit, not inflicted an injury, and should be thanked, not snarled at.

The question of most pressing interest for the moment is, what ought now to be done by the Parliamentary Radicals. And by Radicals we here mean, those who believe in the absolute necessity of what Lord John Russell says he will never consent to—the Ballot, with or without an extension of the suffrage.*

On this point we can but refer to the opinions and sentiments of which we gave so full an exposition in the first article of our last Number. It will scarcely be said that in that article we manifested any hostility to the Ministry, and unwillingness to be just to them, any indisposition to court their alliance. We went as far to meet them, we gave up as much to act in concert with them, as was possible without betraying our cause and degrading our character. We asked them for nothing but to serve themselves. We asked no more in return for their being supported in office, than that they would consent to be kept in it. We asked only that they would propose the Ballot, in the last Parliament in which they can remain Ministers without the Ballot. Though not for the sake of any of their measures, of which they can carry none without the consent of the Tories, yet for the sake of Ireland—to which the English and Scotch Radicals, though accused of being indifferent to it, have in reality postponed every other interest of their country—they have supported Ministers till the time when the Ballot became a vital question to their remaining Ministers on the principles they have hitherto professed. This exact time Ministers have chosen for declaring a degree of enmity to the Ballot, which they have never before expressed: and here, therefore, it is necessary that our support should terminate. For this is no *single* question: it is not one particular point on which the Ministers have gone back; it is the indication, or rather the avowal, of a change of policy. There is no mistake in the matter. The Ministers know as well as we do, that to remain in office they must either carry the Ballot or become Tories.

* We observe there are persons who now begin to say, they are for the Ballot, but are not Radicals. We remember the time when to support the Ballot was considered the distinctive mark of Radicalism, the test which distinguished a Radical from a Whig. We expect to see the day when men will be found supporting universal suffrage, and yet disclaiming Radicalism. So much more afraid are mankind of words than of things.

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The meaning of Lord John Russell's declaration is to apprise the world which side of the alternative they have chosen. Lord John Russell may talk of an engagement with his late colleagues, and a feeling of personal honour involved in not consenting to what is for his country's good. His country does not believe him. He states what is not the fact : he has no such feeling, he is conscious of no such obligation. To believe his assertion would be the insult ; not, to disbelieve it. If it be true now, was it not true at Stroud, and in Devonshire, and on all the innumerable occasions on which he has declared, in a key ever rising higher and higher, that if intimidation and bribery continued, and could not otherwise be prevented, he might be compelled, although unwillingly, to support the Ballot ? Did he say this, while in his heart, and as a man of honour, he felt for ever precluded from supporting it ? And to this avowal of three years' systematic duplicity it is that some men have given the epithets candid and manly. The Reformers do not believe Lord John Russell to be so bad a man, as for his present convenience he gives himself out to be. They believe that he was sincere formerly, and that his present story of having his hands tied is an afterthought. They do not believe that he feels himself under any restraint as to his political course, or that his political opinions at any time sit so tightly on him as not to admit of being shaken off on a change of seasons. They are well assured that this very conduct of his is an example, not of the obstinacy which (judging from his demeanour this session) he seems to consider as one of his qualities, but of the pliability by which his political career has really been characterised. As on all former occasions, so now, he is yielding to the signs of the times ; only his misfortune is that he reads them the backward way. There are always two contrary readings of a historical fact. It seemed to Reformers to be the true reading of the late general election, that unless the shield of the Ballot were thrown over the electors, or something given them that they should think worth fighting for, they would not longer persevere in their sacrifices and sufferings, merely to keep the Tories out and the Ministers in. But the Ministers have construed the same fact in another sense. Their reading is, that the country is becoming Conservative, and that they must become Conservative too : and the first fruit of this is Lord John's declaration.

On the mental hallucination which confounds the apathy arising from hopes gradually withered, and the growing reluctance to brave ruin and penury for no adequate national object, with a reaction in the public mind against those national objects which have never been so much as offered to it, we shall for the present spare our comments. It is enough that the

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Ministry intend to be Conservatives; that they look henceforth to the support of the Conservatives; and that the Tory leaders are looking towards the same object, and are studiously preparing the way for a coalition. They are throwing the Orangemen overboard. They are paying compliments to Lord Mulgrave. They are making signals of compromise on most of the little questions, which have been exaggerated into great ones because the Whigs were committed to them. The present session will be employed in getting rid of these stumbling-blocks. If after that time we do not see Peel and Wellington in office, it will be because they think it more for their interest to remain out of it, getting their work done for them by the present Ministers. If things continue as they are, we shall behold in another session, if not Sir Robert Peel and Lord John Russell, Sir Robert Peel's and Lord John Russell's followers, seated on the same benches, and enthusiastically supporting the same Ministry; while the opposition benches will be occupied by the Radical party, and by thirty or forty rabid Orangemen, the offscouring of the House.

It is a foresight of these things, we must tell Mr. O'Connell, and not insensibility to the interests of Ireland, that makes the bolder part of the English Radicals disapprove and resist his reckless partisanship of the Ministry. The charge of insensibility to Ireland we indignantly deny. Mr. O'Connell may be sincere in accusing us of it; for with him nobody cares for Ireland who cares for anything else. But it is unworthy of Mr. O'Connell's discernment not to perceive, that the good of Ireland, no less than of England and Scotland, depends upon maintaining the popular influence in the House of Commons, and that when this is in jeopardy, all minor risks must be cheerfully run, rather than lose a moment in taking up the necessary ground for covering our place of strength. When the time comes, and it has now come, at which a further perfecting of the representative system without delay is necessary not only to our advancing, but to our holding what we have already gained, including an honest executive in Ireland—from that time, open opposition, to any and every government which refuses those further improvements, is the only position which befits any Radical. And it remains to be shown in what manner this opposition can be carried on without playing into the hands of the Tories, and without exposing our Irish brethren to any risk which can be avoided,—we do not say of an Orange Government, which we consider impossible,—but of losing the Government which they love.

Let the Radicals, then, assume the precise position towards Lord Melbourne which they occupied in the first Reformed Parliament towards

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Lord Grey. Let them separate from the Ministry and go into declared opposition. Let their opposition not be factious ; let them vote with the Whigs as they would with the Tories, in favour of whatever they propose worthy of support. But if the Tories should move a vote of want of confidence in Ministers, let the Radicals vote for it. At first it might appear that this would bring in the Tories, which it is our object to avoid, although even that would be amply compensated if it procured for us the only thing we at present care much about, a compact and vigorous Radical Opposition. But a very little consideration will show that a Tory Ministry need not, and would not, be the consequence. The necessary condition of a Ministry is to possess a majority, that majority could not be made up by Tories alone. It must be formed either of Whigs and Tories, or of Whigs and Radicals ; and the Whigs to determine which. If they chose the Tories, it would then, we imagine, be tolerably obvious what way their disposition lay, and whether we had lost anything by exchanging a Ministry of concealed Tories for one of declared ones. But they would not ; they are too honourable men to do it without making, at least, such conditions in favour of Ireland, as should guarantee Lord Mulgrave's generous and liberal system of government against any infringement ; and the Duke of Wellington's compliments, so direct a rebuke to his own party, are, and we have no doubt were meant to be, a sufficient token that no difficulty of this kind shall stand in the way of a junction when otherwise attainable.

If the Whigs did *not* choose a coalition with the Tories, they would, no doubt, retaliate by moving a vote of want of confidence in a Tory Ministry : and here the Radicals might, and in common honesty must, join with them. By ordinary good management on the part of the Radicals, both these motions would be carried ; and the only Ministry which could then be formed, would be one in the formation of which the Whigs and the Radicals would have an equal voice. The Radicals ought not to drive the Whigs into the arms of the Tories by making hard terms with them. They might be satisfied with the remodelling of the present Ministry, leaving out Lord John Russell and any others who may consider themselves pledged against the Ballot. But the Radicals would have gained a victory. They would have asserted their share of influence, as a portion, and at least an equal portion, of the majority. They would have shaken off the character of a mere *tail*. They would have restored the drooping spirits and decaying hopes of the liberal party throughout the country. They would have taught the reformers to look to them not merely for an occasional speech, but for the attainment of important

practical objects. They would rally public confidence round them, and round the Ministry which they had called into existence. That Ministry, too, would be altered in spirit, far more than it need be altered in the *personnel*. There would be no necessity to require that it should propose the Ballot, because it would be so situated that it could not long go on without proposing it. Such a Ministry would either itself be, or would prepare the way for, that of which the time will soon come, a Ministry of moderate Radicals, a Ministry which will take for its device the BALLOT, JUSTICE TO IRELAND, and JUSTICE TO CANADA.

The name of CANADA recalls us to the more immediate object of this article. To that object we now turn : hoping, we trust not vainly, that now when, according to general opinion, the insurrection is quelled, and when the fate of an unfortunate people is in our hands, it may be possible to obtain for their case an impartial hearing. We know how strongly the tide has set in against them. We are painfully sensible that considerate and unprejudiced views of the occasion of the quarrel, are but beginning to find acceptance with the public mind ; and that among a large portion even of those who form the effective strength of the popular party, the opinions which we feel bound to avow and justify on this unhappy contest will meet as yet with only partial sympathy. While, both for the sake of this cause and of all the other noble principles which are involved with it, and which must suffer when it suffers, we feel keenly the disadvantages under which it must for the present be advocated ; yet this situation has nothing discouraging to us, for it is neither new nor unexpected. The friends of liberal opinions need never flatter themselves that on any new question the public mind will be with them at first. Not one victory has ever been gained by liberal opinions but after a protracted contest ; on no one question are the people of England wiser than their grandfathers, but on those which have been much, and long, and well discussed. When we recollect that Ireland is at our doors, that Ireland has above a hundred representatives in the British Parliament, and that with these favourable circumstances it has required fifty years to procure even such imperfect justice to Ireland as we now see, can we wonder that Canada, which has none of these advantages, Canada, to which the attention of England has never once till this very occasion been seriously directed, should not obtain justice, and that her cause is yet only in the first stages of an uphill fight ? It must be so ; this is among the thousand and one mortifications which in all states of society, and under all governments, those who stand up for principles, or invoke justice from the strong for the weak, must lay their account with enduring. Mortifying enough it truly is, when, instead of having only to bear the defeat of

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an improvement, and the protraction for some time longer of an evil already in existence, they are condemned to witness their country rushing in blind ignorance, and under interested guidance, into positive wrong and injustice. But no generation that we remember has yet escaped a similar infliction: our grandfathers witnessed the American war, our fathers the crusade in behalf of despotism in France. We, of this generation, have now to bear our share of the common liability, and considering what an easy matter it has been found to bring it upon us, may be thankful that we have escaped so long.

In commenting on these unhappy transactions it is not our wish to enter into any retrospective crimination. A new state of things now exists in Canada, and the past has ceased to be of importance, save for the guidance of the future. But with a view to that future, and to the measures on which Lord Durham first, and afterwards the British Parliament, will have to deliberate, some reference to the past is indispensable.

Let us first get rid of the language of mere abuse, which men so inflamed by passion as to be lost to all perception of the most recognised moral distinctions, have heaped upon the insurgents to render them odious. They are styled rebels and traitors. The words are totally inapplicable to them. Take the matter on the testimony of their bitterest enemies, and what do those very enemies impute to them? Simply this, that it is a contest of races; that being a conquered people, they cherish the feelings of a conquered people, and have made an attempt to shake off their conquerors; is this treason? Is not this the conduct with which, when other parties were concerned, Englishmen have been called upon to sympathize, and to subscribe their money, and to proclaim their admiration of the sufferers and their abhorrence of the conqueror to every region of the earth? On the showing of their enemies, what have the Canadians done other than the Poles? We do not compare Lords Dalhousie and Aylmer to the Grand Duke Constantine, or the administration of our colonial office to that of Nicholas, although even of Nicholas it must be remembered that we have not *his* story; we have but that of the "rebels" and "traitors," as they are called in his vocabulary; and does any one think that Mr. Papineau or Mr. Morin would have any difficulty in making out a case against us, to the satisfaction of a sympathizing audience in a rival nation, without our being heard, or having any opportunity of contradiction? Of the injuries inflicted by a foreign government, the people that suffers them, not the people that inflicts them, is the proper judge; and when such a people revolts, even improperly, against the foreign yoke, its conduct is not treason or rebellion, but war.

From this view of the case, which, as we infer from his language, has commended itself to the vigorous and unsophisticated understanding of the Duke of Wellington, and which has been forcibly argued in one of the anti-Canadian pamphlets * at the head of our article, what follows ? That the Canadian contest not being rebellion, but war, the insurgents who fall into our hands are not criminals, who can be tried by a court of

* 'A Plain Statement of the Quarrel with Canada.' "Too much, by far," says this candid and liberal writer, "has been said of treason in this case, and that by men who should think less of antiquated laws, and more of modern rights. Once, indeed, rebellion against the Sovereign, under any circumstances, and by whatever authority, was called treason, and it is still so written in our law books : but the only sort of resistance which, in a representative government, justice and common sense will allow to be so called, and so punished, is the resistance of individuals to an united legislature. It will not be said that, in this sense of the word, the Canadian insurgents are committing treason against the Constitution of Canada : for their legislature is broken up, and in the dismemberment of that body, to which, when united, they owe their allegiance, each party is but clinging to the part which he most loves. It makes little difference to the justice of the case, that the executive of the colony, backed as it is by the resources of this country, has the power of crushing all opposition in its subjects. If the Canadian rebels are to be judged by their obligations to their own country, and to their own constitution, there would be no more justice in hanging Mr. Papineau, than there would have been some two hundred years ago in the execution of Hampden or of Essex, had it been their fate to fall into the hands of the royalists. Their case, too, was undoubtedly one of treason ; but are there any Englishmen who think that their punishment would not have been murder ? Unless we renounce the doctrine, that a people is represented by a majority of its citizens, we shall be compelled to admit, that the case of the Canadian insurgents, be it right or wrong, be it hopeless or triumphant, is the cause of the Canadian people. If, then, the acts of these men be not treason against Canada, it is hard to say that they are treason against us ; for whatever subjection the collective body may be under to this country, the first duty of the individual colonist is to his own legislature, the first claim upon his allegiance is that of his own people.

"That people, it is true, have been guilty of an offence against us ; but the offence of one people against another is not treason, and, whatever it be called, it should be punished only as the offences of nations are punished, by war. Experience will soon teach the Canadians, that they were too few to be enemies ; let not passion make us forget, that they are too many to be traitors. The ordinary incidents of the conflict, the usual consequences of a defeat, ending, as it probably will, if not in partial confiscation of their land, and in taxation of their products, yet, at least, in abridgment of their liberties, are enough surely for their punishment, and our security. Let us not, in the meantime, debase even the nature of civil war into the likeness of reciprocal murder. The usual arguments for the cutting off even of their leaders apply not to this case ; for if we did visit upon their heads the offences of their followers, with what colour of truth could we pretend, that we did so for the sake of their countrymen whom they had deluded to their ruin ? Would not the world see it was the sacrifice of the chiefs of one people to the interests of another ; should not we feel, that it was vengeance we were inflicting, under the name and with the forms of justice ? It is not thus, whatever we choose to make the issue of this contest, that it behoves us either to vindicate our quarrel, or to re-assert our rights. If Canada is to return to her subjection, let us remember that the blood of thousands slain in the field is more easily forgiven than that of one who dies on the scaffold ; and if, which is possible, we should find it expedient to yield up to our colonists a dearly bought independence, let not the last memento we leave them of our rule be the gibbet of those men who, whatever we may think of their character, will be ever regarded by their countrymen as the authors of their nationality, the first assertors of their freedom."

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justice, but prisoners of war; and that not only that indiscriminate judicial massacre, at the prospect of which the ascendancy party in the colony are expressing so much delight, but any severities beyond what are implied in the precautions necessary against a second outbreak, would be as disgraceful, as much to be abhorred by all who make any pretension to civilization or humanity, as would similar treatment of any captives taken in honourable warfare. Unless there be among the insurgents men who, without justification from the laws of war, have been found wanting in similar forbearance towards *their* prisoners, banishment from the colony, or imprisonment for safe custody, and only while safe custody is required, must be the severest punishment inflicted even upon the chiefs. To shed blood, anywhere but in the field, in such a quarrel, would stamp indelible infamy on the perpetrators; and would meet with its just punishment in another insurrection, ten times more difficult to quell than the present. A cause, generally, for the first time acquires a real hold upon the feelings of large masses, when martyrs have been made for it. A little will make men talk, but for making them take to their muskets and fight, there is nothing like having to avenge the blood of those whom they love and honour.

But the question is not to rest here. If we are to keep Canada, and if we are to keep her by any other means than tyranny; if Lord Durham's mission is to lead to anything but setting up a government of brute force, to be maintained at boundless expense to this country, until some embarrassment in our foreign affairs enable the oppressed majority to set themselves free; if this is not to be the end of it, the character of the Canadian insurrection must be thoroughly understood, and we are prepared thoroughly to discuss it. We are prepared to assert to the utmost, without restriction or qualification, the justice and holiness of the cause in which these men have taken arms. We are not prepared to vindicate the wisdom of their conduct. There go other things to warrant an insurrection, besides a just cause, and the principal of them is, a reasonable prospect of success. Where that is wanting, the temerity of the attempt, on the part of the leaders at least, cannot be justified—can at most admit of excuse. But it does not require victory to constitute success. If theirs is the just cause we affirm it to be, and if the English are a just people, is it not success to have drawn so much of their attention to it, when the most stirring appeals from the most patriotic voices in Parliament failed last year to interrupt that slumber which the din of arms has at last broken? Mr. Papineau—a man whom Mr. Edward Ellice, from personal knowledge, describes as "blameless in character,

and of high talent and worth"—Mr. Papineau ought, we are told, to have followed the example of Mr. O'Connell : but is Mr. Papineau in Parliament, with seventy followers at his back, his country's affairs the turning point of all British politics, and a Ministry existing at his will ? To their brethren and countrymen who have been ruined, and to the families of those who have been slain, the authors of this revolt have an account to render, which we pray that they may come well out of. But against us they are altogether in the right. The people of Canada had against the people of England legitimate cause of war. They had the provocation which, on every received principle of public law, is a breach of the conditions of allegiance. Their provocation was the open violation of their constitution, in the most fundamental of its provisions, by the passing of Resolutions through Parliament, for taking their money from their exchequer without their consent.

We must dwell a little on this topic ; for there is something very alarming to us in the nonchalance with which Englishmen treat so grave a matter as the infraction of a constitution. A Resolution taking away representative government from Lower Canada passes the Commons' House with about fifty dissentients, and (except from the brave Working Men) hardly a whisper of public disapprobation. And there are liberal men who consider this a trifling matter, a thing which may be softly remonstrated against, but which is no " practical grievance ; " and there are writers, and able writers too, who compare it to levying a rate for paving and lighting a corporate town when the corporation has refused to do it : we ask those writers if Parliament ever, by formal enactment, gave up the right to tax the corporate towns ; or ever, by another act, placed all the taxes raised within one of them at the absolute disposal of the Town Council ? If so, the cases of the municipality and of the colony would be *prima facie* parallel. If not, the one act is an ordinary exercise of legitimate power, the other is breaking faith with a people ; taking away from them the right which constitutes them members of a free state, and the violation of which, by the sense of all ages and nations, forms the *casus belli* between a people and their government. It is inflicting on them that injury which Hampden resisted, and for which Washington raised the standard of " treason and rebellion, " and rung the knell of aristocratic government over the face of the earth. For it was not the twenty shillings of ship-money that Hampden was solicitous about, nor did the Americans make their Revolution for the sake of the penny a pound in the price of their tea, which was the ostensible matter in issue when the war began. They fought for the secu-

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rites for good government, and to be willing to do so is one of the tests of a nation's fitness to enjoy them.

And on what pretence have we done what even the Colonial Secretary * admits to be "violating one of the great principles of the Canadian constitution?" It is because they have refused the supplies. It is because they have used a right, which we gave them, but which we never intended they should use; or if we did, we intended that we, against whom they used it, were to be the judges whether they used it properly. By this impartial tribunal it has been decided that they have made a bad use of it, and that it is therefore to be taken away. Permit us to ask, since when has this discovery been adopted into English morals, that a constitution is a gift resumable at the discretion of the giver? We thought this doctrine had been confined to Charles the Tenth, and Ernest King of Hanover, on whom a great load of obloquy has been heaped very undeservedly, if the grant of a constitution implies a tacit condition that the powers it gives shall be forfeited on their being exercised disagreeably to the donor. That the power of despotic government, once parted with, may be re-assumed at pleasure, is a maxim we little thought to hear from the lips of Englishmen; or that political rights once bestowed upon a people are to be exercised according to the judgment of somebody who happens to be stronger. A constitution once conferred is sacred, and to revoke it or to infringe it ("a constitution which is violated is destroyed") is a breach of the most solemn compact which man can make with man, or people with people, and to be justified only by those emergencies which justify anything—when society is threatened with dissolution—when anarchy or civil war is impending, and all laws and institutions, and all compacts to maintain laws and institutions, must give way before the terrible alternative.

Now let us see what would have been the evil incurred, supposing Parliament had still respected the Canadian constitution, and left to the Assembly the control over their own money. Much use has been made of the phrase "stopping the supplies," and it has been attempted to attach to it the ideas belonging to what is known by the same name in this country, viz., a complete annihilation of all government. It however turns out that the only supplies which the Assembly has power over (except those for bridges, roads, schools, and the Legislature itself) are the salaries of the Judges, of the Governor and his Council, and of a certain number of subordinate executive officers. These salaries have been suspended for three years, and we have had a most piteous tale of the hard-

* Lord Glenelg's despatch to Lord Gosford, dated 22nd May, 1837, in the first Canada papers of this Session, p. 11.

ships, and we do not question their truth, which have been suffered by some of the unpaid officers of Government. Now, suppose Parliament, which professes so much compassion for these people, instead of violating the Canadian constitution to pay them, had resolved to pay them itself, what would have been the cost to this country? The arrear for the whole three years is £127,744,* from which subtracting about £23,000 drawn from the hereditary revenues of the Crown in Canada not given up to the Assembly, there remain £104,000, rather more than a year's income of Adelaide—the Queen Dowager. The Parliament of Canada, then, have in the last resort a power of fining this country about £35,000 a year for maintaining a bad government in Canada, or, to say no worse, a government unacceptable to the majority of the Canadian people; and the stoppage of the wheels of government, the subversion of civilized society, and all that mountain of evil which we have heard so much about, resolves itself on examination into the inconvenience of paying that sum.

We may ask, is this too great a power to be possessed by the people of a province, over rulers living at the other side of the globe, who appoint all their judicial and administrative officers, whose sanction is necessary to all their laws, and over whom they hold no other check, direct or indirect, to secure any the smallest consideration of their interests or their opinion? Is the power of making us pay £35,000 a year, in addition to the fifty millions of taxes we pay already, when we who *can* control their government, although they cannot, suffer it to govern them in a manner odious to the majority—is this more than enough to secure a little attention to the interests of the Canadian people, from a public who allowed a Resolution for destroying the Canadian constitution to pass both Houses with scarcely more general interest or inquiry than happens on many a private Bill? Canada cannot invade us: she cannot interrupt our trade; she cannot cut off our revenue; she cannot touch any one of our national interests—only one thing she could do; she could tell us, that if she did not like the men we sent to govern her, we might pay them ourselves; that if we chose to offend her, our fault, or if you like it better, her misfortune, should cost us 35,000*l*. It is for the sake of taking away this power, that the national honour has been stained with breach of faith, and an English Parliament has followed the example of Polignac and King Ernest, in treating a constitutional charter as waste paper; it is to save this penalty of a third part of Queen Adelaide's income, contingent upon making the Canadians discontented with their go-

* £142,160 14*s*. 6*d*. was the sum voted by Parliament; but the real amount as appears from Lord Gosford's statement in p. 75 of the Parliamentary papers already referred to, was that mentioned in the text.

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vernment, that a brave and kind-hearted people have been goaded into insurrection, and unknown multitudes of them given over to slaughter and misery !

It has been seen that we have argued this question without reference to the original justice or reasonableness of the claims of the Canadians, because we maintain (woe the day when it is necessary to stand up for such a proposition !) that even if they were wrong, and the grounds on which they refused the supplies wholly indefensible, they were in the right from the moment when their representative institutions were invaded, and an outrage practised upon them which no brave people ever did, nor ever will, tamely submit to. But we go vastly farther. We assert, that their demands were right ; that they were right on the whole, and right for the most part in the particulars. And this is the most important question of all at the present moment. For according as just concessions do or do not accompany the coercive proceedings about to be authorized by Parliament, will Canada either be reconciled to us, or continue during a few years of compulsory subjection to regard us with detestation, which as soon as she succeeds in throwing us off will be exchanged for contempt.

On this subject it is a source of gratifying reflection to us that this Review cannot charge any part of the ignorance which universally prevails as to the Canadian grievances, upon its own neglect. As long ago as 1827 the ' Westminster Review ' demanded the attention of the English public to the vices of the administration of Canada, and traced those vices expressly to the irresponsible constitution of the Legislative Council. That article, as well as one in the second number of the ' London Review,' was written by Mr. Roebuck ; which may serve as an answer to two assailants : to those who assert that the objection to the Legislative Council is a new complaint only four years old, made because a grievance was wanted, after all real grievances had been redressed ; and to the hired advocate of the Canadian loyalists in the ' Morning Chronicle,' who calls Mr. Roebuck the hired advocate of the Assembly, as if Mr. Roebuck, who was bred though not born in Canada, and spent the greater part of his youth there, had not been the champion of its people many years before he either was, or could look to be, their *hired* champion—and as if Mr. Roebuck's *hire*, as well as that of Lord Gosford and his subordinates, were not suspended by the unhappy differences which he is accused, by implication, of fomenting for his own advantage.

As, however, the undaunted struggles of Mr. Roebuck in a cause with which every principle of his political life is identified, and which had few

friends in this country until his unwearied activity obtruded the case of the Canadians upon an inattentive public—as these exertions are called “a wonderful display of public opinion, produced by throwing backwards and forwards the voice of two or three individuals,” * it may be well to state that Mr. Roebuck is an entire stranger to the present article. The writer of it has never before publicly expressed any opinion on the claims of the Canadians, and he draws his facts not from Mr. Roebuck, or from any of the partisans of the Assembly, but from the Reports of Lord Gosford and the two other Government Commissioners—of the men who advised the violation of the Canadian constitution—of the authors of Lord John Russell’s policy—the men who told him all he knows of the colony—who furnished him with his brief, of which brief, however, a great part of his speech on the re-assembling of Parliament is in downright contradiction. If anything can excuse the Canadian people for having believed that less than drawing the sword would not procure them a hearing in the mother country, it is the inattention which has been the fate of the statements in these Reports. There is not an imputation on the objects of the Canadian party which these documents do not refute; there is not a misrepresentation against the popular cause which they do not deny, not by implication or inference, but positively and in express terms. The Resolutions of last year never could have been passed, or if passed never would have been acted upon, if the Members of the House of Commons had performed the duty of reading the Reports, and had thought that they would be read by their constituents.

The Reports bear marks, it is but justice to say, of good intention, and even of candour. The Commissioners appear to have gone out, Lord Gosford especially, with the ordinary Whig aversion to strong opinions on either side. All former Governors had been blind followers of the dominant, or, as it calls itself, the English party; we perceive no marks of this influence over Lord Gosford, and that party detests him as much as it applauded his predecessors. The Reports which he signed put that party altogether in the wrong, and the popular party generally in the right. But although the Commissioners carried out with them no unfair intention, they carried out a feeling which seems ineradicable in every official breast, namely, that when anything amounting to a quarrel has once arisen between subjects and a Government, no matter though the Government was first to blame, no matter though the demands of the subjects were just, and ought to be conceded, and never ought to have been refused; before any such concession can now be made, they must be punished for the course of energetic remonstrance by which they sought it; “the authority of Government must be asserted,” of the Go-

* ‘The Canadian Controversy,’ p. 53.

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vernment who are admitted to have been in the wrong, against the people who were in the right. And hence there is in the Reports of the Commissioners, what the House of Assembly noticed in their address to Lord Gosford on the 25th of August last,* "one essential and paramount contradiction, which pervades every part of them and forms their essence. It is, that while they admit the reality of the greater portion of the abuses and grievances of which we have complained, the Commissioners do not recommend their removal,† and the destruction of the causes which had produced them, but an act of aggression against this House which has denounced them, and the absolute destruction of the Representative Government in this province, by the illegal and violent spoliation of the public monies of the people by the Ministers or by the Parliament."

Lord John Russell, in the speech in which he introduced to Parliament the measures now in progress, drew a most charming picture of the generosity of the British Government towards the conquered Canadians, and a most hideous one of the ingratitude with which so much liberality had been requited, and said what used to be said to himself on the subject of the Catholics of Ireland, that our whole government of Canada has been one course of concession. It has been one course of concession, and so, thank God, bad government everywhere, in the present age, must be. But if he means that any one concession was made willingly, or till after protracted refusal, or in consequence of anything but the "factious violence," as it was then considered, of the House of Assembly, "working upon the prudence," or, if Lord John Russell prefers it, upon the good intentions of the English Government, then Lord John Russell says one thing, and Lord John Russell's commissioners and informants say the direct opposite. Let us hear them :—

"The House of Assembly was not slow to perceive the importance of the functions which had been consigned to it by the Constitution ; the Government alone was slow to perceive it, or if perceiving, to acknowledge it, and to provide with prudence for the consequences. Instead of shaping its policy so as to gain the confidence of that House, it adopted the unfortunate course of resting for support exclusively on the Legislative Council. The existence of a majority of French Canadians in the Assembly, seems to have been thought a sufficient reason that there should be a majority of English in the Council ; for the principle observed in the first nominations, of making it of equal numbers, French and English, was early departed from, and thus the Council and Assembly were constituted on antagonist principles almost from the commencement.

* Parliamentary Papers, *UT SUPRA*, p. 39.

† This is an over-statement. The Commissioners do recommend that, some time or other, some of the grievances be removed.

"For a number of years the Council, keeping as it did, in close union with the Executive, prevailed; but in process of time the inherent force of a popular Assembly developed itself, and in the great contest which ensued about money matters, the Assembly came out completely successful. During this financial struggle, continued as it was for more than a quarter of a century, it was only natural that other collateral causes of difference should arise, and if we were to examine into these, we believe we should also find that in every one of them the Assembly has carried its point. As a few instances, we will mention the right of the House to accuse and bring to trial public officers; their right to appoint an agent in England, and their right to control their own contingent expenses; their demand for a withdrawal of the Judges from political affairs, or from seats in the legislative bodies, or the executive councils, and for the surrender of the proceeds of the Jesuits' estates. All these are points on which contests have taken place between the two Houses, and in every one of them the popular branch has prevailed, and the Council been successively driven from every position it had attempted to maintain. The Assembly, at the same time, by attacking abuses in the Administration, and bringing charges against numerous officers of the Executive, succeeded scarcely less in exposing the weakness of the Government, than that of the Council. Both the Council and the Government have been worsted in many a struggle that they never ought to have engaged in, and if the Assembly has, in consequence, grown presumptuous, we apprehend that such is only the ordinary effect of an unchecked course of success.

"In the course of these protracted disputes, too, it has happened that the Assembly, composed almost exclusively of French Canadians, have constantly figured as the assertors of popular rights, and as the advocates of liberal institutions, whilst the Council, in which the English interest prevails, have, on the other hand been made to appear as the supporters of arbitrary power, and of antiquated political doctrines; and to this alone we are persuaded the fact is to be attributed, that the majority of settlers from the United States have hitherto sided with the French, rather than the English party. The representatives of the counties of Stanstead and Missisquoi have not been sent to Parliament to defend the feudal system, to protect the French language, or to oppose a system of registration. They have been sent to lend their aid to the assertors of popular rights, and to oppose a government by which, in their opinion, settlers from the United States have been neglected or regarded with disfavour. Even during our own residence in the province, we have seen the Council continue to act in the same spirit, and discard what we believe would have proved a most salutary measure, in a manner which can hardly be taken otherwise than

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to indicate at least a coldness towards the establishment of customs, calculated to exercise the judgment and promote the general improvement of the people. We allude to a bill for enabling parishes and townships to elect local officers, and assess themselves for local purposes, which measure, though not absolutely rejected, was suffered to fail in a way that showed no friendliness to the principle. " *

This is rather a different picture from the paternal Government so charmingly delineated by Lord John ; and in this picture it will be remarked that the Legislative Council figures as the author of the grievances, and the Executive as its subservient tool. We find that every one of the improvements for which Lord John Russell takes credit, have been extorted from the persevering opposition of the Legislative Council. We find the prayers of the people stopped in that intermediate stage, and the representative of the Crown of England prevented from granting them, or shielded from the responsibility of refusing them. We find all the abuses in the Executive Government, which were not acknowledged then though they are acknowledged now, sheltered from reformation by the Council, as might well be the case, since it was the Council and their connexions who profited by them. We find the Council engrossing the patronage of Government, exercising, under the mask of the Governor, all his power, and forming the prop on which, by acknowledgment, the Government " rested exclusively for support. " We find, according to the Commissioners, † that this " tendency to lean for support rather on the Legislative Council than on the representatives of the people, " has lasted " in an undiminished degree to the most recent times. " We find this body still unaltered in its constitution ; altered indeed somewhat in its *personnel*, but almost solely by the introduction of some men considered renegades from the popular party, and of others too insignificant to be of any party at all ; and we find it still displaying the same spirit, by throwing out, even during Lord Gosford's Administration, a bill for municipal institutions, which the generally enlightened author of ' The Canadian Controversy ' thinks is the very thing Canada most requires, and which Lord Gosford considered " a most salutary measure. " ‡ We see all this ; and will it be affirmed, in the face of this, that the Council

* General Report, pp. 5-6.

† Reports, p. 108.

‡ They have done this, not once, but frequently. The Commissioners say (p. 45) " In the present particular, at least, the leaders of the popular body have shown a laudable desire to get out of what has been called the French system, a system which made the Government everything, the people nothing ; and their opponents have laboured, and are still labouring, to perpetuate the vices of a condition, the evils of which, as far as they hurt themselves, they are ever loud in denouncing. We need scarcely say that we allude to the frequent failure of bills for the election of township and parish officers, and for the management of other matters of local concernment. "

must be maintained as the representative of the mother country ? If it represented the mother country, would it reject measures of important reform, which the real representative of the mother country strenuously supports ? Do we not see broadly apparent, what has always been asserted by the advocates of the Canadians, that the Council represents nobody ; not the colony, for that is represented by the House of Assembly ; not the aristocracy of the colony, for there is no such thing ; not the mother country, for that is represented by the Governor and the Executive Council ? That it is the organ of no interests but those of a jobbing local oligarchy ; that the mother country is making itself odious by upholding a body which maintains grievances that itself would be willing to redress, and that there will be no good government for Canada until the complaints of the people go straight to the Governor, instead of being intercepted by a body pretending to be a part of themselves, and prevented, to use the Assembly's words, " from reaching the foot of the Throne. "

But of the spirit still pervading the Council no adequate conception can be formed from the single instance mentioned by the Commissioners. The reader may consult with advantage the descriptive list in the third number of the ' Canadian Portfolio,' of *forty-two* bills, embracing all the most important matters of internal government, which were sent up by the Assembly to the Council in the single session of 1835-6, and either rejected, suffered to drop, or returned with amendments considered inadmissible. Many of these are alleged to have been sent up too late in the session ; and this is true of a proportion, but, as appears from the dates on which they passed the Assembly, and which are given in the ' Portfolio,' not of a majority. But we wish here to take nothing upon the authority of the Canadian party. We will content ourselves with one fact, which will be disputed by no party, and which will give quite a sufficient idea of the spirit of the Legislative Council.

By the Jury Law of Canada, juries are summoned by the sheriff ; an officer appointed for life, but removable at the will of the Crown. This officer, who, like all others named by the Executive, generally belongs to the local oligarchy, and never to the party opposed to them, determines by his will alone the mode of selecting jurors : he has the power, and, it is alleged on the Canadian side, unscrupulously exercises it, of packing juries so as to obtain any verdict he pleases. In 1832, however, a provincial act was passed, extending to Canada the principles of Sir Robert Peel's Jury Act. This bill gave satisfaction to the people, and put an end for a time to the very worst of the existing abuses ; but unfortunately it expired in 1835. The Legislative Council refused to renew it. The

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old packing system was therefore re-introduced, and flourishes at this moment. The Canadian leaders, if tried for treason or sedition before the Canadian courts, will be tried by judges whom they have kept without their salaries for three years, and one of whom, in the hearing of a friend of ours, declared several years ago that "the hanging of Papineau would settle all disputes;" and juries packed by a sheriff to whom they have also refused his salary; both judges and sheriff belonging to the party which in the two Montreal papers, the 'Herald' and 'Gazette,' is clamouring for a *special commission to try the traitors, as it would be absurd to fatten them all the winter for the gallows.*

Have we made out our case? or does the reader still think that the Legislative Council is "no practical grievance," and that the Canadians ought to be robbed of their Constitution because they sought the removal of that grievance by exercising to the utmost all their constitutional privileges, that utmost power (so far as money was concerned) amounting to involving this country in a responsibility of thirty-five thousand pounds? Will Lord Durham's mission, of coercion and conciliation, produce the tranquillity which the Ministers themselves do not hope for more earnestly than we do, unless the measures of redress, to be embodied in the new Constitution, include the abrogation of this mischievous body?

The Commissioners (two out of three at least) approve, in principle, the demand for an Elective Council. "Under more favourable circumstances, at an earlier time, or had less animosity been excited, we can conceive" (they say) "that good might have resulted from the introduction of a principle of election." But they "cannot advise the experiment now," for the avowed reason, that "the concession of it, in the present excited state of public feeling, would afford a triumph to one portion of the population which would be fraught with danger." Heaven knows it would afford no triumph to anybody now. The "danger" which was anticipated is explained in another place, by the Commissioners,* to be a civil war between the two races, in which the English party would be the aggressors. We direct attention to the circumstance, that the fear lest the loyal party should rebel is advanced as the chief reason for rejecting demands which, if there had been no such probability, would have been deemed fit to be granted. Since, then, not justice, but the apprehension of rebellion, and that from the loyal party, was to decide the case, the *reality* of rebellion ought, we think, to go for something on the other side. Or is it only unreasonable dissatisfaction, dissatisfaction *acknowledged* to be unreasonable, which has the privilege of expressing itself in that way?

* Reports, p. 90.

The Council, it will be said, protects the English settlers : were it not for the Council, they would not think their lives and properties secure. And what is a Governor for ? of what use is the whole machinery of the Executive, and why has the Governor power to reject every bill passed by the Legislature, if he cannot prevent one part of the community from tyrannizing over another ? The only mischief the House of Assembly could do to the English, unless the Governor were a party to it, they can do as long as there is a House of Assembly : they can refuse any new enactments, which the interests or opinions of the English part of the population may call for. And upon this Lord Glenelg appears to take his stand in behalf of the Council. In his late speech in the House of Lords he claims the Council as the liberal party. He calls the Assembly " those were against improvement—attached to the obsolete notions of former times—unfriendly to commerce, to the spread of intelligence, to the diffusion of education "—for which last great object, by the bye, they made one of the most munificent provisions, in proportion to their resources, ever made by any country—the renewal of which has been lately refused by the Legislative Council on the express ground of its being too munificent. Let this be a sample of Lord Glenelg's accuracy when he gives the following history of the contests between the two bodies :—" Thus it happened, on the one hand, that those who were the supporters of an oligarchy hostile to improvement made use of the rights and privileges of popular institutions, and pushed them to an extreme ; and on the other, privileges not generally used to promote improvements and support free institutions, were pushed to an extreme for the purpose of supporting them. " Let us hear the Commissioners, and learn what good the improvements which the Council advocated have ever got by the support of such a body. " If we were to inquire, " say they, * " in what degree the demands of the English have been advanced by its means, we doubt whether we should not find that the advocacy of the Council has tended rather to defeat, than to promote, the measures which the commercial classes have demanded, and continue to demand, with the greatest earnestness ; for instance, the commutation of tenures, the establishment of registry offices, the settlement of the wild lands, and the facilitating of commercial intercourse. "

All this cry of a hostility to the English race, and a disposition on the part of the Assembly to tyrannize over them, is a mere work of art. Hear Sir George Gipps, one of the Commissioners. He says, explicitly, that the contest is not one of races, but of principles. " So long as the contest can be made to appear as one not of nationality but of political prin-

* General Report, p. 7.

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ciple, the Americans, and a portion even of the British, will be on the democratic side. It is the policy of the leaders of the majority in the Assembly to give the dispute the character of a contest between the aristocratic and the democratic principle rather than one of nationality, and they have succeeded to a great extent; for, of the members from the townships, where there are no persons of French, but numbers of American origin, nearly as many vote with the French party in the Assembly as against them; and if to the persons thus returned by the American or democratic interest be added the Englishmen who are sent to the Assembly by French constituencies, we shall find that of the twenty-two individuals with English names, or of English origin, who have seats in the Assembly, thirteen generally vote with the French party, and only nine against them. It is, I believe," continues Sir George Gipps, "the apprehension that their democratic allies of British origin would change sides, should the dispute become one purely of nationality, that renders the leaders of the French party desirous of remaining for the present under the protection of Great Britain." *

Jealousies between the two races do, doubtless, exist; the late events have administered fresh fuel to them, and they are at this moment the greatest difficulty in the good government of the colony. But who is the cause of these jealousies? Who fostered them? We need only quote Lord Glenelg. More ingenuous than Lord John Russell, to whom the conduct of the English Government, from the first conquest, presented itself throughout in so amiable a light, the Colonial Secretary says (we quote from the daily papers)—"The Constitution of 1791, from the earlier years at least in the history of Canada, might be said not to be administered. It might have been very advantageous for the people of Canada if it had been so; but the *Executive Government took part with one race, against the other—it took part with the English race*, instead of being the umpire and arbitrator between both. All the honours and emoluments flowed in the same channel, and thus the popular institutions were severed, for the Canadians, from the Government, and they obtained no advantage through them. This was done while the Government usurped practically the funds of the State. Those funds were in the hands of the Governors—abuses crept in, and at length they prevailed to such an extent that many of the English united with the French race to obtain a redress of grievances."

Remembering all this; remembering that it is but of yesterday that the French Canadians have been admitted to any share of the honours and offices of their native country; remembering that the local oligarchy,

† Reports, pp. 88, 9.

represented by the Council, have done their utmost to inflame those national differences which enable them to identify *their* cause with that of the British settlers and even of the mother country ; is it to be wondered at that such animosities should exist ? But will any one believe that they are the cause of the discontents, or that the Council have made themselves obnoxious to the French by upholding the English, when the party which is opposed to the Council is a mixed party of French and English, and when, " of the members from the townships, where there are no persons of French origin, nearly as many vote with the French party in the Assembly as against them ? " The assertion is one of the misrepresentations, calumnies we may venture to call them, of which, from their distance and the popular ignorance on the subject, the Canadians are liable to far more than we can at present meet ; and of many others of which, the refutation, from the Commissioners' Reports, might be made fully as conclusive. *

* We hear it, for instance, in every speech, and read it in every newspaper, that the Canadians are an ignorant peasantry, who, being hoodwinked by their SEIGNEURS, and by their lawyers, are fighting to preserve the feudal system. Some scribes have actually dropped the expression, " heritable jurisdictions," as if any such thing existed in Canada. More discreet advocates have urged the hostility of the party to the Canada Tenures Act : a law enacted by Parliament to facilitate the conversion of the feudal tenures into the tenure of free and common socage, under the English law. Now the Commissioners expressly declare that this pretended attachment to the bad parts of the old French law of landed property does not exist. " We believe," say they (General Report, p. 34), " that the injurious tendency of heavy fines on the transfer of property, as well as of other obstacles to its free transmission, are beginning to be generally acknowledged, and that in reality there is less difference on this point than might at first sight appear ; so that if the evils of the feudal tenure had not unfortunately been seized as topics for political declamation, and thrown into the general mass of subjects of party contest, they would probably receive an early remedy by common consent. In the views now expressed by leading Canadians of French origin, there is no desire whatever to perpetuate the onerous parts of the tenure, and the people have been moved, in some cases, to represent the inconvenience." After citing instances, the Commissioners say that a Committee of Assembly in 1834 " exhibited a feeling very favourable to the extinction, on reasonable terms, of the burthens of the seigneurial tenure : that on the other great point, the inconveniences of the French law of mortgage, the House of Assembly expressed " just and liberal views more than ten years ago," and that the distracted state of the province, and not any desire " to adhere to institutions no longer fitted to the intelligence of the age," is the cause why a remedy has not yet been applied. The objections of the Assembly to the Canada Tenures Act are stated by the Commissioners ; they are numerous and weighty : we mention two of them ; that, being framed in ignorance of the pre-existing law, it unsettled titles and destroyed existing rights, and also, " that it was far too favourable to the seigneur." If this complaint proceeded from a people hoodwinked by their seigneurs, it says much for the public spirit and honourable feeling of the seigneurs. The Commissioners, after a full examination, declare all the objections to be valid ; and recommend (what Parliament has since voted) that as soon as the question of compensation can be adjusted with the colony for the rights created under the Tenures Act, the Act shall be repealed, and the reform of the law of landed tenures left to the Provincial Parliament. The fault which the Canadians find with the English tenures, is not the feudal customs which they are intended to replace, but those which they introduce. According to the usual custom of men who despise " theory," English legislators could hit upon no other means of getting rid of institutions

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To this people, thus calumniated, it will now be for Lord Durham to do justice. He has the power. A more enviable position than he now enjoys, if his soul is on a level with his opportunities, has been filled by no statesman of our era. The whole institutions of two great provinces are prostrate before him. Canada is a *tabula rasa* upon which it rests with him to inscribe what characters he pleases. The immediate pacification of the colony depends upon him alone ; the institutions by which it is to be hereafter governed, upon Parliament, guided, as there is every appearance that the present Ministry at least are willing to be, almost implicitly by his advice.

He has, in the first place, what was the most necessary of all, and the investing him with which is an earnest of the good disposition of Ministers : he has powers for a general amnesty. We trust those powers are not granted to him in vain. If, when he arrives, he finds the insurrection at an end, or if the promise of oblivion can prevail upon any who still remain in arms to lay them down, great will be the responsibility of refusing it. It is not yet proved that there was any preconcerted insurrection. There was preconcerted arming and drilling ; there were violent public meetings and political associations ; but these may have been for passive resistance, and a display of force, like the measures of intimidation which carried the Reform Bill. There was nothing, about the final outbreak, which bore any marks of concert. Had insurrection been planned, it would have been better organized, and would not have been so soon begun. The people seem to have flown to arms for the rescue of their leaders, who were torn from them, or on the point of being so, to be immured in goal, and tried by juries of their enemies ; and some of whom were paraded with every mark of ignominy, by armed bodies of those enemies, through the very heart of the disaffected districts. But if

which were supposed to be bad, than by transplanting their own, bodily. They could not manage to introduce, in place of the feudal tenures, the full and absolute property in land, which is common under English law, without introducing along with it the complicated and expensive English modes of conveyance (those which existed under the French customs being, according to the Commissioners, " simple, expeditious, and cheap, ") and without introducing the feudal institution of primogeniture. Now it is one of the properties of this favourite institution of aristocracy, that no people who have ever lived under anything else can bear it. " The people of all origins on this continent," say the Commissioners, " greatly prefer the equal division, which existed under the French law ; " and the feeling is nowhere stronger, they say, than in the townships, where there is not a single French inhabitant. Accordingly the Commissioners recommend that the French methods of conveyance be restored, and the English tenures divested of the incident of primogeniture. Will the English public learn from this how grossly the dislike of the French Canadians to innovations in their social arrangements has been exaggerated, and how little credit is due, not merely to the ministerial press, but to Lord Glenelg, when he accuses the popular party of being the illiberal party, an " oligarchy hostile to improvement—unfriendly to commerce—attached to the obsolete notions of former times ? "

they have been guilty, to the utmost extent, of whatever is included in a deliberate and concerted insurrection, they are not rebels, nor traitors ; they are, we repeat, captives taken in war ; who went to war with us, justly or unjustly, wisely or unwisely, but who have a claim to the rights of honourable warfare, and such treatment as a generous nation bestows on a vanquished enemy.

But while we do not fear that spirit of sanguinary vengeance, happily confined to the rabid party calling themselves Loyalists, and to the Orange newspaper writers, who long to be doing in Ireland what they instigate in Canada ; it will not be a less fatal mistake, nor in the end less productive of human suffering, if in the new arrangement of the government, the French Canadians are treated as a defeated party, the English as a victorious one ; if the former are now to be considered as the ruled, the latter as the rulers. At the pass to which Ministers had brought matters by their first act of injustice, we do not quarrel with them for the course they have now adopted ; it would be over-nice to make any mouths at the suspension of what remains of the Canadian constitution, after the only provision in it which renders the rest of any value has been despotically overruled and made a nullity. When a country is in a state of civil war it is hardly possible to execute a constitution. When a country is divided into two parties, exasperated, by the taste of each other's blood, beyond the possibility of a peaceful accommodation, an armed umpire with strength to make himself obeyed by both, is a blessing beyond all price, and such a mediator it behoves the mother country to be. In itself, therefore, the dictatorship which has been assumed, and of which Lord Durham is the immediate depositary, admits of justification. But if it shall prove to have been assumed only to remove the obstacles which the constitution of the House of Assembly has of late years opposed to the previously uncontrolled sway of a rapacious faction ; if because the majority of the people, when they had the power over the Assembly, did not use it to our liking, we mean to remedy this inconvenience by taking the power from them and giving it to a minority ; if we have set aside their constitution in order to confiscate the privileges of the old inhabitants for the benefit of a small proportion of foreigners and new settlers ; then will a stain rest upon the British name, to be effaced only on the day when all that is now done shall be undone ; and the name of a Whig will be as infamous in American annals as is the name of a Tory in those of Ireland.

If the English and the French inhabitants of Canada cannot live under each other's government, which ought to give way ? The whole numbers of the British race in Lower Canada do not even, on their own computa-

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tion, amount to a third of the whole ; and of these, that large portion who consist of emigrants or descendants of emigrants from the United States, and a part even of those of British origin, as the Commissioners acknowledge, side with the French party ; it cannot be they who think themselves in danger from the French, and demand protection. The remainder, Sir George Gipps * distinctly asserts, are " for the most part the natives of our own isles." Here, then, is a body of men, positively not of American birth, strangers, mere new-comers, and a portion of them, particularly the trading classes, not even perhaps intending to remain permanently in the colony—who have actually the presumption (or somebody has it for them) to expect that the political constitution of a long-settled country is to be shaped to suit their convenience. Not content with having what, under such circumstances, they would have in no country of the old world, the privileges of citizenship, and influence in public affairs proportional to their numbers, they must be the masters, and the old inhabitants of the country must be under their rule. They went to Canada, save the mark ! under the faith of the British Parliament. Did Parliament promise them that because they went to Canada, the institutions necessary to protect or to satisfy the old inhabitants of the country should be denied to those inhabitants ? Did Parliament promise them a veto on every act of the Legislature of the country ? Let them wait till they are a majority. If they are, as they represent, the active, enterprising, and industrious part of the people, and the others are the ignorant and indolent portion, they will not have long to wait. Till that time, let them be satisfied if they have a share of representation proportional to their numbers, and if the Governor applies his veto to all laws which aim at preventing those numbers from increasing. If they ask aught beyond this, let them be told, and told in plain and unequivocal language, that Parliament does not intend that their presence there is to be an impediment to any settlement which is for the good of the colony or of the empire ; that they went there under liability to all changes of institutions which the general interests of the population of the colony might require ; that they went there subject to the certainty of a separation, sooner or later, and to the contingency of its happening in their time, a possibility which, while the United States exist, it would be rather bold to expect us to believe they had not fair warning of.

What may be done for the less numerous race, if it is found impossible that both should live harmoniously under one government, is to give them separate Legislatures. This has been done once, by separating Canada into two parts, the Upper and the Lower province. Sir Charles Gray,

* Reports, p. 99.

the least liberal of the three Commissioners, proposes that it should be done again ; to which, according to him, local circumstances oppose no insuperable obstacle. Sir Charles Grey's plan * is to divide Canada into three districts, with separate provincial parliaments, to each of which, the separation of the races being thus effected, he would have no objection to give an elective Upper House. On this system neither of the races would be legislated for by the other ; and a federal Legislature would be created, of delegates from the local Legislatures, to which the matters of common concernment to the three provinces would be exclusively referred. In this federation, Upper Canada, and the other North American colonies, might, he suggested, be ultimately included.

Of all changes in the political organization of Canada which there would be any chance of carrying through Parliament, none has occurred to us which appears liable to so little objection as this, or attended with more probabilities of good. The principle of separating the internal legislation and administration of each colony from the control of the interests common to the different colonies, has received the sanction of the highest authorities on both sides. It was one of Mr. Roebuck's propositions, in his statesman-like speech last year on conciliation with Canada, a speech which he has republished in the fourth number of the ' Portfolio,' and to which we invite the attention of all who may still mistake his occasional violence of language, and the strength with which he expresses his speculative convictions, for impracticability in action, or incapacity for temperate views when the occasion calls for them. Lord John Russell at the time expressed no other objection to Mr. Roebuck's propositions than that he feared they were too moderate to satisfy the Canadians. Lord Glenelg, too, in his late speech, declared himself prepared, if Upper Canada should consent, to sanction a " federal union " between the two Canadas, and he enumerated among the objects which would be within the competence of the federal legislature, " the navigation of the St. Lawrence, the duties by which their commerce is to be regulated, their railroads, their bridges, their internal communications, and their monetary system."

It was part of Mr. Roebuck's proposition, that the federal legislature should be that tribunal for the impeachment of public functionaries, the absence of which is the only objection the House of Assembly made to a permanent appropriation for the salaries of the judges, over whom, in the absence of such a tribunal, they did not choose to divest themselves of the degree of control implied in an annual vote. In answer to the demand for such a tribunal, Lord Gosford offered them the Legislative

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Council! and it is pretended to be wondered at, that they regarded the offer as a mockery.

We entreat Lord Durham, as he values the successful issue of the solemn trust he has, as he assures us, so reluctantly undertaken—and (we may say without disparagement to his feelings of honour and patriotism) as he values also that high reputation to which the applause of all parties on his nomination is so glorious a tribute, and those prospects of a brilliant career as a British statesman, which he will most assuredly either make or mar by his conduct in this emergency; by all these considerations we entreat him so to act upon his declared resolution of knowing no distinctions of opinion, party, or race, as to provide, if provision be needful, for the interests of a minority,—not by putting them over the heads of the majority, or by any legerdemain contrivance to give them a power in the Legislature beyond what their numbers entitle them to,—but either by the rigid exercise, for their protection against any meditated injustice, of the veto of the mother country, through its responsible representative, and not through an irresponsible council; or if that will not content them, by separating the two races, and giving to each of them a legislature apart. No other plan will render Canada, from this moment, other than a disgrace and a weakness to the British empire; by no other plan, when a separation comes, shall we have entitled ourselves to the kindly remembrances and friendly attachment of the Canadian people; by no other can we be saved from the disgrace of having first broken their constitution, and then used the insurrection that act of tyranny provoked, as an excuse for confiscating the rights of the native majority in favour of a handful of strangers.

Our subject draws to a conclusion. But we cannot leave it without awarding, so far as our words can have any influence, the just honour to that small, but even because of its smallness, that glorious minority, who, with a talent and energy as conspicuous as their intrepidity, have now and last year stood up for everlasting justice against temporary clamour; and afforded in the cause of the injured and calumniated, at the further side of the globe, an imperishable example of that constancy and resolution, and that defiance of unmerited unpopularity, which we find men every day claiming credit to themselves for—displaying in defence of their own pockets, or of the selfish prerogatives of their “order.” The conduct of Mr. Grote, Mr. Warburton, and Mr. Hume will live in history. Nor ought we to omit Lord Brougham, who has shown by his conduct in this Parliament, that he at least perceives the time to be come when a practical statesman can best serve both the interests of his country and his own glory, by putting himself at the head of the moderate Radicals. We have reserved Sir William Molesworth and Mr. Leader for the last

place, because to them is due, not only honour for what they have done, but vindication against the accusations it has exposed them to. If, by the warmth of expression natural to men deeply penetrated with the truth of their principles, they exposed themselves to misconstructions of which a most ungenerous advantage was taken by their ministerial opponent, it is not upon their sentiments but upon the reproaches which were heaped on those sentiments, that the condemnation not only of every highminded person, but we will be bold to add, of every Christian, will rest. What was the feeling they expressed? That they would learn with less regret, the defeat of the British troops in this war, than their success. Will their assailant be pleased to remember, that according to *their* view of the matter it is an *unjust* war? At what time since Christianity existed has it been held, that success in injustice was a lot which patriots ought to desire for their country? That to prosper in evil courses was not a far worse evil than to fail in them—was not the strongest mark of divine displeasure,—permitted only that the example of the subsequent chastisement and humiliation might be more memorable? Lord John Russell would bring us back to heathenism. That love of country, which would rather see the success of our country than that of the right, is an essentially Pagan sentiment, and even as such, repudiated by all the great philosophers and moralists of the Pagan world. If there is any one thing which we would hold up to especial honour in the conduct of Mr. Leader or of Sir William Molesworth (for we know not which of them it was) on this occasion, it is that they dared, in the face of a hostile assembly, and without the support of a favouring public, to declare the sentiment, which Lord John Russell has not thought it unworthy of him, strong in his majority, to hold up to obloquy and insult. A.

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